

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

BUNGIE, INC.,

Plaintiff,

v.

ELITE BOSS TECH, INC., et al.,

Defendants.

CASE NO. 2:21-cv-01112-TL

ORDER

This matter is before the Court *sua sponte*. The Court entered an order of default judgment against Defendant Daniel Fagerberg Larsen (Dkt. No. 77) and previously entered a consent judgment against Defendants Robert James Duthie Nelson, Elite Boss Tech, Inc., and 11020781 Canada Inc. (Dkt. No. 29). In its First Amended Complaint (“FAC”), Plaintiff Bungie, Inc., also includes claims against other named parties as well as a number of fictitious “Doe” Defendants. Dkt. No. 43 ¶¶ 23–45. While some Doe Defendants have apparently been identified since this action commenced (*see id.*), Does 9–20 are still unidentified and have not been served.

1 Dkt. No. 43 ¶ 45. Further, it appears that the remaining named Defendants in the FAC have not  
2 been served.

3 While naming fictitious defendants is generally disfavored in federal court, “plaintiff[s]  
4 should be given an opportunity through discovery to identify the unknown defendants, unless it  
5 is clear that discovery would not uncover the identities, or that the complaint would be dismissed  
6 on other grounds.” *Gillespie v. Civiletti*, 629 F.2d 637, 642 (9th Cir. 1980). On October 12, 2022,  
7 Plaintiff stated that it “expects either to be able to identify the remaining Doe Defendants or,  
8 alternatively, dismiss without prejudice as to those Defendants on or before November 30,  
9 2022.” Dkt. No. 42 at 2. Does 9–20 remain unidentified with no explanation.

10 Federal Rule of Civil Procedure 4(m) allows the Court to dismiss defendants who are not  
11 timely served *sua sponte* upon notice to the plaintiff. The Court therefore DIRECTS Plaintiff to file  
12 a stipulated notice voluntarily dismissing all unnamed Doe Defendants and named Defendants  
13 who have not been served, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii), **within**  
14 **fourteen (14) days** of this Order.

15 Alternatively, if Plaintiff intends to proceed with any of its claims against any of the Doe  
16 Defendants or named Defendants who have not yet been served, it must move for leave to amend  
17 its complaint to identify any unnamed defendants and/or for additional relief from the service  
18 deadline **within fourteen (14) days** of this Order. Otherwise, pursuant to Rule 4(m), the Court  
19 will *sua sponte* order the dismissal of all claims against all Doe Defendants and all named  
20 Defendants who have not been served.

21 Additionally, for clarity of the record, the Court DIRECTS Plaintiff to file **within seven (7)**  
22 **days** of this Order a confirmation that Plaintiff has settled with or dismissed any Defendant from  
23 the original Complaint that is not listed in the Amended Complaint, other than Defendants  
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1 Robert James Duthie Nelson, Elite Boss Tech, Inc., 11020781 Canada Inc., and Daniel  
2 Fagerberg Larsen.

3 Dated this 11th day of May 2023.

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6 Tana Lin  
7 United States District Judge  
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